

SUPREME COURT REPORTER



Volume 97

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Covering

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Cases Argued and Determined

in the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

ST. PAUL, MINN.

WEST PUBLISHING CO.

1979

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JUSTICES

OCTOBER TERM, 1976

CHIEF JUSTICE

HON. WARREN E. BURGER

ASSOCIATE JUSTICES

HON. WILLIAM J. BRENNAN, Jr.

HON. POTTER STEWART

HON. BYRON R. WHITE

HON. THURGOOD MARSHALL

HON. HARRY A. BLACKMUN

HON. LEWIS F. POWELL, Jr.

HON. WILLIAM H. REHNQUIST

HON. JOHN PAUL STEVENS

RETIRED

HON. STANLEY REED, Associate Justice

HON. WILLIAM O. DOUGLAS, Associate Justice

HON. TOM C. CLARK,¹ Associate Justice

ATTORNEY GENERAL

HON. EDWARD H. LEVI²

HON. GRIFFIN B. BELL³

SOLICITOR GENERAL

HON. ROBERT H. BORK⁴

HON. WADE H. MCCREE,⁵ Jr.

CLERK

MICHAEL RODAK, Jr.

REPORTER OF DECISIONS

HENRY PUTZEL, Jr.

MARSHAL

ALFRED WONG

LIBRARIAN

BETTY J. CLOWERS⁶

¹ Deceased June 13, 1977.

² Resigned January 20, 1977.

³ Commissioned and took oath January 26, 1977.

⁴ Resigned January 20, 1977.

⁵ Confirmed March 4, 1977.

⁶ Designated Acting Librarian May 4, 1976.

ALLOTMENT OF THE JUSTICES

DISTRICT OF COLUMBIA CIRCUIT

CHIEF JUSTICE WARREN E. BURGER, of Virginia.

Appointed Chief Justice by President Nixon June 23, 1969 ;
took office June 23, 1969.

FIRST CIRCUIT.

Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico.

JUSTICE WILLIAM J. BRENNAN, Jr., of New Jersey.

Appointed by President Eisenhower October 15, 1956 ;
took office October 16, 1956.

SECOND CIRCUIT.

Connecticut, New York, and Vermont.

JUSTICE THURGOOD MARSHALL, of New York.

Appointed by President Johnson August 30, 1967 ;
took office October 2, 1967.

THIRD CIRCUIT.

Delaware, New Jersey, Pennsylvania, and Virgin Islands.

JUSTICE WILLIAM J. BRENNAN, Jr., of New Jersey.

Appointed by President Eisenhower October 15, 1956 ;
took office October 16, 1956.

FOURTH CIRCUIT.

Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

CHIEF JUSTICE WARREN E. BURGER, of Virginia.

Appointed Chief Justice by President Nixon June 23, 1969 ;
took office June 23, 1969.

FIFTH CIRCUIT.

Alabama, Florida, Georgia, Louisiana, Mississippi, Texas, and Canal Zone.

JUSTICE LEWIS F. POWELL, Jr., of Virginia.

Appointed by President Nixon December 9, 1971 ;
took office January 7, 1972.

ALLOTMENT OF THE JUSTICES

SIXTH CIRCUIT.

Kentucky, Michigan, Ohio, and Tennessee.

JUSTICE POTTER STEWART, of Ohio.

Appointed by President Eisenhower October 14, 1958;
took office October 14, 1958.

SEVENTH CIRCUIT.

Illinois, Indiana, and Wisconsin.

JUSTICE JOHN PAUL STEVENS, of Illinois.

Appointed by President Ford, December 17, 1975;
took office December 19, 1975.

EIGHTH CIRCUIT.

Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

JUSTICE HARRY A. BLACKMUN, of Minnesota.

Appointed by President Nixon May 14, 1970;
took office June 9, 1970.

NINTH CIRCUIT.

Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

JUSTICE WILLIAM H. REHNQUIST, of Arizona.

Appointed by President Nixon December 15, 1971;
took office January 7, 1972.

TENTH CIRCUIT.

Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.

JUSTICE BYRON R. WHITE, of Colorado.

Appointed by President Kennedy April 12, 1962;
took office April 16, 1962.

TEMPORARY EMERGENCY COURT OF APPEALS.

CHIEF JUSTICE WARREN E. BURGER, of Virginia.

Appointed Chief Justice by President Nixon June 23, 1969;
took office June 23, 1969.

**SUPREME COURT
OF THE
UNITED STATES**

**ASSIGNMENT OF MR. JUSTICE CLARK
ORDER**

October 4, 1976

An order of the Chief Justice designation and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the Third Circuit for the purpose of hearing the following cases: *Hartman et al. v. Rosenlieb et al.*, No. 76-1210; *Hartman v. USA et al.* and *Brobeck v. USA et al.*, No. 76-1389; *Hartman v. Alexander etc.*, CA Misc.Rec. No. 76-8093; *USA v. David B. Adams, etc.*, No. 76-1737; *Carlton E. Bowser, Sr. and Violet M. Bowser v. CIR*, No. 76-1031, and *Edward A. Cupp v. CIR*, No. 76-2165 (T.C. No. 4828-73), and for such additional time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a) is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

ASSIGNMENTS OF MR. JUSTICE CLARK

ORDERS

November 1, 1976

An order of the Chief Justice designating and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the Fourth Circuit from December 6, 1976, to December 9, 1976, and for such additional time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a) is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

An order of the Chief Justice designating and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the Eighth Circuit from February 14, 1977 to February 18, 1977, and for such additional time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a) is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

SUPREME COURT OF THE UNITED STATES

ASSIGNMENTS OF MR. JUSTICE CLARK

ORDERS

January 10, 1977

An order of the Chief Justice designating and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the District of Columbia Circuit from January 20, 1977, to January 27, 1977, and for such additional time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a) is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

An order of the Chief Justice designating and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the Seventh Circuit from May 23, 1977, to May 27, 1977, and for such additional time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a) is ordered entered on the minutes of this Court pursuant to 28 U.S.C. § 295.

ASSIGNMENT OF MR. JUSTICE CLARK

January 25, 1977

An order of the Chief Justice designating and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the Ninth Circuit from February 28, 1977, to March 4, 1977, and for such additional time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a) is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

ASSIGNMENT OF MR. JUSTICE CLARK

ORDER

February 28, 1977

An order of the Chief Justice designating and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the Seventh Circuit for the purpose of hearing and deciding the matter of Appeal No. 76-1161, *Taylor and Daly v. American Bar Association et al.*, and for such additional time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a) is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

SUPREME COURT OF THE UNITED STATES

ASSIGNMENT OF MR. JUSTICE CLARK

ORDER

April 25, 1977

An order of the Chief Justice designating and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the Eighth Circuit from October 10, 1977, to October 14, 1977, and for such additional time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a) is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

ASSIGNMENT OF MR. JUSTICE CLARK

ORDER

May 31, 1977

An order of the Chief Justice designating and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the Seventh Circuit from September 26, 1977, to September 30, 1977, and for such additional time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a) is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

ASSIGNMENT OF MR. JUSTICE CLARK

ORDER

June 6, 1977

An order of the Chief Justice designating and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the Fifth Circuit in the case of *Willis et al. v. American Bar Association et al.*, No. 76-4315, pursuant to 28 U.S.C. § 294(a) is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

SALUTE TO MR. JUSTICE CLARK

June 16, 1977

Present: Mr. Chief Justice Burger, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, Mr. Justice Marshall, Mr. Justice Blackmun, Mr. Justice Powell, Mr. Justice Rehnquist, and Mr. Justice Stevens.

The Chief Justice said:

"Before we proceed today with the regular business of the Court, it is my sad duty to take note for the record and the Journal of the Court of the death of our beloved colleague and friend Mr. Justice Tom Clark, who served as a Justice of this Court from 1949 to 1967, after serving as Attorney General of the United States from 1945 to 1949.

"His death came almost exactly 10 years after retiring from this Court. But retirement for Justice Clark was not the end but the beginning of a new career in which he was a leading spokesman for judicial improvement and which, at the same time, took him on special assignments into every one of the 11 Federal Circuits. So far as we are aware, no Judge or Justice in history sat on every Court of Appeals after his technical retirement from active service.

"Even while sitting on this Court Justice Clark was a literal missionary for improvement of judicial administration, and it was logical that, when the Federal Judicial Center began operations in 1968, he was appointed its first Director. In that position, he gave standing and credibility to this important new institution created by Congress to improve the administration of justice.

"When he retired as Director, he resumed regular sittings on Courts of Appeals and District Courts all over the United States. And for the past 15 years he has had a part in every major program to improve the work of the courts. He played a leading role in launching the National College of the State Judiciary at Reno, Nev., where more than 1,000 State judges have received special training in the past decade.

"Last Saturday he was in his Chambers here at the Supreme Court, completing his preparation for cases he was to hear argued in the United States Court of Appeals for the Second Circuit in New York. When he did not arrive at the Court of Appeals on Monday morning, it was discovered that his death occurred during the night.